In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1299

SERVICE TECHNICIANS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner seeks review of a decision of the Court of Claims construing a contract for custodial services.

On June 18, 1971, petitioner entered into a fixed-price contract with the government obligating it to perform various custodial services at Luke Air Force Base, Arizona, for the period July 1, 1971, to June 30, 1972. Shortly after petitioner began to perform under the contract, a dispute arose concerning the frequency of certain services required by the contract, petitioner contending that those areas designated for "regular custodial services" and those areas designated for "extended custodial services" were mutually exclusive (Pet. App. B; pp. 2-3). Petitioner performed the contract in accordance with the government's view of its contract obligations, and then sought additional compensation. The contracting officer denied petitioner's claim for additional compensation, and the Armed Services Board of

Contract Appeals denied petitioner's appeal (Pet. App. D) as well as petitioner's motion for reconsideration (Pet. App. C).

Petitioner then filed the present suit in the Court of Claims under the Wunderlich Act, 68 Stat. 81, 41 U.S.C. 321-322, seeking to overturn the decisions of the contracting officer and the Armed Services Board of Contract Appeals. In rejecting petitioner's claim, the trial judge stated that (Pet. App. B, pp. 7-8):

> [Petitioner] may not * * * persist in its conception [of the contract] by ignoring the countervailing import of either the express declaration in the tabulation's interpretative footnote or other pertinent indicia, such as the associated floor plan, and the service chart [next to be discussed]; to say nothing of eschewing both the opportunity of attending a pre-bid conference and the repeated invitation to make a site inspection.* * *
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> * * * [C]rediting [petitioner's] avowed impression of the mutual exclusivity of floor care obligations would require the assumption that the footage earmarked in the chart for "Extended Custodial Service" was not to be swept during the entire one-year term of the contract—an hypothesis that by anyone's standards, janitor even more than judge, completely transcends the most extravagant limits of the "zone of reasonableness" * * *. [Footnote omitted.]

The Court of Claims affirmed (Pet. App. A, p. 1), noting both that "the court is of the view that the Government's construction of the contract is correct and that, at the best for [petitioner], the contract had a glaring ambiguity calling upon [petitioner] to make an inquiry before bidding and before following its own unilateral interpretation * * *. (*ibid.*).

We submit that the Court of Claims' decision is correct and that no further review is warranted. The government gave petitioner adequate opportunity to familiarize itself with the conditions under which the work it was bidding on was to be performed by inviting it to inspect the situs of the work, and to discuss the terms of the contract by inviting it to attend pre-bid conferences. There is no evidence in the record that petitioner availed itself of either opportunity; rather, it adopted in the view of the trial judge a patently unreasonable construction of the contract specifications, underbid its competitors on the basis of this unreasonable construction, and then sought relief through a claim for additional compensation. The Court of Claims was correct in holding that the government's construction of the contract was the correct one. If petitioner failed to construe the contract correctly, it did so only because it ignored the unreasonableness of its own contrary construction and did not take advantage of the ample opportunities to seek clarification prior to submitting a bid.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MAY 1975.